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June 22, 2004

VIA HAND DELIVERY

Honorable Deborah Taylor Tate, Chairman
c/o Sharla Dillon, Docket & Records Manager
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

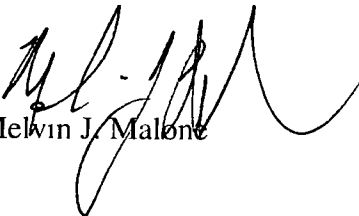
**RE: Tennessee Coalition of Rural Incumbent Telephone Companies and
Cooperatives Request for Suspension of Wireline to Wireless Number
Portability Obligations Pursuant to Section 251(f)(2) of the
Communications Act of 1934, as Amended
TRA Docket # 03-00633**

Dear Chairman Tate.

Enclosed please find thirteen (13) copies of the following for filing in the above-captioned matter: *In the Matter of Citizen Telephone Corporation, et al., Pursuant to Section 251(f)(2) of the Communications Act of 1934, As Amended, For Suspension of Wireline-to-Wireless Number Portability Requirements*, Indiana Utility Regulatory Commission, Cause Nos. 42529, 42536 and 42550, (May 18, 2004)

Also enclosed is an additional copy to be "File Stamped" for our records. If you have any questions or require additional information, please let me know

Respectfully,


Melvin J. Malone

MJM/cgb
Enclosures

cc: Stephen G. Kraskin
R Dale Grimes
Timothy C Phillips
Edward Phillips

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ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION)
OF CITIZENS TELEPHONE)
CORPORATION, et al., PURSUANT TO) **CAUSE NO. 42529**
SECTION 251(f)(2) OF THE)
COMMUNICATIONS ACT OF 1934, AS)
AMENDED, FOR SUSPENSION OF)
WIRELINE-TO-WIRELESS NUMBER)
PORTABILITY REQUIREMENTS)

IN THE MATTER OF THE PETITION)
OF CENTURYTEL OF CENTRAL) **CAUSE NO. 42536**
INDIANA, INC., et al., PURSUANT TO)
SECTION 251(f)(2) OF THE)
COMMUNICATIONS ACT OF 1934, AS)
AMENDED, FOR SUSPENSION OF)
WIRELINE-TO-WIRELESS NUMBER)
PORTABILITY REQUIREMENTS)

IN THE MATTER OF THE EMERGENCY)
PETITION OF SMITHVILLE) **CAUSE NO. 42550**
TELEPHONE COMPANY, INC.,)
PURSUANT TO INDIANA CODE)
8-1-2-113 AND § 251(f)(2) OF THE)
COMMUNICATIONS ACT OF 1934, AS)
AMENDED, FOR SUSPENSION OF)
WIRELINE-TO-WIRELESS NUMBER)
PORTABILITY REQUIREMENTS AND)
FOR A GENERIC COMMISSION) **APPROVED: MAY 18 2004**
INVESTIGATION INTO THE ISSUES)
RELATED THERETO)

BY THE COMMISSION:

Judith G. Ripley, Commissioner

Lorraine Hitz-Bradley, Administrative Law Judge

On October 22, 2003, Citizen's Telephone Corporation, Clay County Rural Tel. Coop., Inc., Daviess-Martin County R.T.C. d/b/a RTC Communications, Hancock Rural Telephone Corporation, d/b/a Hancock Telecom, Hancock Communications, Inc., Mulberry Coop. Telephone Co., Inc., Northwestern Indiana Tel. Co., Inc. ("NITCO"), Perry-Spencer Rural Telephone Coop., SEI Communications, Inc., Sunman Telecommunications Corp., d/b/a Enhanced Telecommunications Corp., Washington County Rural Telephone Coop., and Yeoman

Telephone Co., Inc., filed their *Verified Petition*, which was docketed as Cause 42529. On November 5, 2003, CenturyTel of Central Indiana, Inc., CenturyTel of Oden, Inc., Craigville Telephone Co., Inc., Monon Telephone Co., Inc., New Lisbon Telephone Co., Inc., Pulaski-White Rural Telephone Coop., Inc., Swayzee Telephone Co., Inc., Sweetser Telephone Co., Inc., and West Point Telephone Co., Inc. also filed their *Verified Petition*, docketed as Cause No. 42536. The Presiding Officers consolidated Cause Nos. 42529 and 42536 by docket entry on November 7, 2003. Both petitions requested that the Commission suspend Petitioners' LNP obligations consistent with the authority granted to the Commission under 47 U.S.C. §251 (f)(2).

Thereafter, on November 18, 2003 the Petitioners filed a *Motion for Emergency Suspension of Wireline-to-Wireless LNP Obligations and Supplement to Petitions* ("Motion"). In the Motion, Petitioners reiterated their request for an immediate suspension of their respective obligations to support wireline-to-wireless numbering porting ("intermodal porting") for those Petitioners whose Commission-certificated service areas were within the 100 top Metropolitan Statistical Areas ("MSAs"). The Motion was filed as a result of the Federal Communications Commission's ("FCC") decision issued November 10, 2003. See, In the Matter of Telephone Number Portability, Memorandum, Opinion and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116, FCC 03-284, released November 10, 2003 (the "*November 10 Intermodal Order*"). The Presiding Officers issued a docket entry on November 21, 2003, in which Petitioners were granted this relief during the pendency of the proceedings, not to exceed May 24, 2004.

Prior to a granting of the emergency relief on November 21, 2003, Communications Corporation of Indiana, The Home Telephone Co., of Pittsboro, Inc., Home Telephone Co., Inc., Tri-County Telephone Co., Inc., and Tipton Telephone Co., Inc., filed a *Petition for Leave to Intervene* and to be made party to the consolidated Causes, and requested any and all relief (including the emergency relief) granted to the Petitioners. The requested relief in this Petition was granted on November 21, 2003.

On November 24, 2003, Smithville Telephone Company ("Smithville") filed its petition for suspension and emergency relief, as well as a requesting that the Commission convene a generic investigation into the administration, routing, porting and cost recovery associated with Local Number Portability ("LNP"), docketed as Cause No. 42550. On November 26, 2003, a Docket Entry was entered denying Smithville's request for emergency relief and staying Smithville's request for consolidation, pending the prehearing conference that was set concurrently with Cause Nos. 42529 and 42536. In this same Docket Entry, Smithville was directed to provide answers to certain data requests on or before December 1, 2003, which Smithville did. Also on December 1, 2003, Smithville filed its request for reconsideration of the Presiding Officers' denial of its request for an immediate suspension of its intermodal porting obligations. Smithville's relief was granted, consistent with that provided by the Presiding Officers' in their November 21, 2003 decision, in the Prehearing Conference Order discussed below.

For purposes of this Order, each of the above-referenced companies that joined in or filed one of the Petitions noted above will be referenced as "Petitioner" or jointly as "Petitioners."

On November 21, 2003, the Presiding Officers issued a data request and ordered those Petitioners who provide service within one of the top 100 MSAs to respond to such data requests on or before December 1, 2003. The other Petitioners were directed to respond on or before January 9, 2004. All responses to this docket entry, as well as responses to further docket entries issued by the Presiding Officers, are hereby incorporated into the record in this consolidated Cause.

Interventions were filed by AT&T Wireless Services, Inc. ("AWS") on November 26, 2003, SprintCom, Inc. and WirelessCo., L.P. ("Sprint") on December 3, 2003, and Omnipoint Holdings, Inc., VoiceStream Columbus, Inc., VoiceStream GSMI Operating Company, LLC, and Powertel/Kentucky, LLC, d/b/a T-Mobile USA, Inc. ("T-Mobile") on December 11, 2003. Subsequently, T-Mobile filed a motion to withdraw its petition to intervene on February 25, 2004, which motion was granted at the evidentiary hearing on the consolidated causes.

In addition to its request for intervention, AWS also filed an *Appeal to Full Commission*, requesting that the Commission reverse its November 21, 2003 decision granting a temporary suspension of the intermodal porting obligations of certain Petitioners. On December 9, 2003, Petitioners filed their Brief and Response to the AWS' appeal. Thereafter, on December 15, 2003, AWS requested that its appeal be withdrawn.

The Commission established the procedural schedule for this proceeding by its Prehearing Conference Order of December 17, 2003. On January 16, 2004, the Presiding Officers issued a Docket Entry concerning action by the FCC on that day. *See, In the Matter of Telephone Number Portability, Order*, CC Docket No. 95-116, FCC 04-12, released January 16, 2004 (the "*January 16 Intermodal Order*"). In light of the *January 16 Intermodal Order*, the Commission requested that Petitioners either choose to dismiss the proceedings without prejudice, or file their prefiled testimony. All parties were provided the opportunity to comment on the *January 16 Intermodal Order*, with such submissions due on or before February 6, 2004. Only Sprint filed its response on that date. On February 23, 2004, Smithville filed a motion to strike Sprint's filing as non-responsive to the January 16th Docket Entry or to require Sprint to make available a witness that would adopt the filing as his/her testimony in this proceeding. Smithville's Motion was denied at the evidentiary hearing in this matter.

On January 23, 2004, the direct testimony of Petitioners' witnesses Sandra S. Ibaugh and Steven Watkins were filed with the Commission. On February 4, 2004, the Commission issued further data requests to be answered by Mr. Watkins, Ms. Ibaugh, and the Petitioners, either by name or as a group. Responses were filed on February 18, 2004 and have been incorporated into the record in these Causes.

On February 13, 2004, the Office of the Utility Consumer Counselor ("OUCC") filed a motion to extend the time for the filing of its testimony until February 17, 2004 and for the filing of Petitioners' rebuttal testimony to February 24, 2004. No objection was made to the motion. The OUCC prefiled direct testimony of its witness Harold Rees on February 17, 2004. On February 24, 2004, Petitioners prefiled rebuttal testimony of Mr. Watkins.

1. Notice and Jurisdiction

Proper, legal and timely notices of the hearings in this Cause were given and published by the Commission as provided for by law. The proofs of publication of the notices of the hearings have been incorporated into the official files of the Commission. Pursuant to Section 251(f)(2) of the Communications Act of 1934, as amended (the "Act"), and I.C. §8-1-2-113, this Commission is authorized to suspend enforcement of the obligations of the Petitioners with respect to the obligations found under Sections 251(b) of the Act. See 47 U.S.C. §251(f)(2). Moreover, the Petitioners' obligations to support LNP, generally, and intermodal porting, specifically, are found in Section 251(b)(2). See 47 U.S.C. §251(b)(2). Therefore, the Commission finds that it has jurisdiction over the parties and subject matter of these Causes.

In making this finding, we are fully cognizant of the authority granted to us by I.C. §8-1-2-5 and under the Act. Congress' incorporation of the Section 251(f)(2) suspension mechanism reflects the general understanding that the State Commissions are the appropriate authority to make this determination in their own respective State.

To this end, the Act establishes a very specific framework for the consideration of a request for suspension. The Commission is vested with the authority to suspend or modify obligations found in Section 251(b) of the Act for local exchange carriers ("LECs") "with fewer than two percent of the Nation's subscriber lines installed in the aggregate nationwide" if the Commission determines that such suspension or modification:

- (A) is necessary –
 - (i) to avoid a significant adverse economic impact on users of telecommunications services generally;
 - (ii) to avoid imposing a requirement that is unduly economically burdensome;or
 - (iii) to avoid imposing a requirement that is technically infeasible; and
- (B) is consistent with the public interest, convenience, and necessity.

47 U.S.C. §251(f)(2). Congress, therefore, fully understood that the Section 251(f)(2) mechanism would ensure that state commissions have the opportunity to determine whether number portability, or any other Section 251(b) requirement, is appropriate in areas of the nation served by the smaller LECs such as the Petitioners.

We also find that the *November 10 Intermodal Order* does not preempt the Commission's right and obligation to protect the overall public interest of the telecommunications users served by the Petitioners. The FCC has previously recognized that the service areas of small LECs like the Petitioners would be subject to the consideration by state commission of possible Section 251(f)(2) suspensions. In response to similar concerns, the FCC cited Section 251(f)(2) and

noted that if state commissions exercise their authority to suspend, "eligible LECs will have sufficient time to obtain any appropriate Section 251(f)(2) relief as provided by the statute." *In the Matter of Telephone Number Portability, First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236, 7302-03 (1997) ("*First Order on Recon*").

Accordingly, we find that we do have the authority to grant the relief ordered herein.

2. Summary of Evidence

A. Petitioners' Testimony

1. Testimony of Sandra Ibaugh.

Ms. Ibaugh stated that the FCC's *November 10 Intermodal Order* raised a series of technical, operational and economic issues, which she attributed to the current status of Petitioners' LNP capability and the ambiguous and vague directives contained in the FCC decision. In Ms. Ibaugh's view, the FCC's decision is based upon assumptions that all LECs, including the Petitioners, were currently LNP capable and would be able to provide LNP services in the same technical and operational manner. Ms. Ibaugh stated that such an assumption was wrong, and substantial technical and operational differences exist between and among Petitioners and large-size incumbent LECs ("ILECs"), a fact that Ms. Ibaugh believed the FCC may have recognized as a result of the *January 16 Intermodal Order*. In any event, Ms. Ibaugh indicated that the Petitioners were not seeking to initiate a policy debate about the public interest served by intermodal porting or pursue their disagreement with the FCC's actions in these Causes. Rather, the Petitioners were simply trying to figure out exactly how intermodal porting could be accomplished using their existing network configurations, interconnection arrangements with other telecommunications carriers' networks, and interstate/intrastate approved tariffs. As such, Ms. Ibaugh recommended that the porting obligations of the Petitioners be suspended pending completion of the technical, operational, and administrative tasks required to becoming LNP capable, and the resolution of the issues that remain uncertain following the FCC's recent actions.

With respect to the operational issues, Ms. Ibaugh noted that the Petitioners only provide local exchange service within their Commission-certificated exchange boundaries and not beyond them. Likewise, she noted that these companies have no interconnection obligations for the establishment of interconnection points with other carriers beyond their own networks. While Northwestern and Smithville are LEC intraLATA toll providers, the remaining Petitioners only provide intrastate access. This was in contrast to the wireless service areas licensed by the FCC, that Ms. Ibaugh indicated often extended across an individual Petitioner's exchange boundaries and LATA boundaries. For the national wireless carriers, in Ms. Ibaugh's opinion, their service areas were essentially the entire nation.

Ms. Ibaugh also described the status of the interconnection arrangements between the Petitioners and wireless providers. Based on a "high level comparison," she indicated that the majority of the Petitioners' traffic to and from wireless carriers is through a transiting arrangement instituted by a large-size ILEC or the interexchange toll network. In the case of

transiting, according to Ms. Ibaugh, the large-size ILEC is directly connected to both the Petitioner and the wireless carrier and provides a third-party interconnection function. This "transit" arrangement, however, is only between the large-size ILEC and the wireless provider. If a Petitioner is directly connected to a wireless carrier, the completion of a call to a number ported from a wireline LEC to a wireless carrier could be completed over the direct interconnection facilities. Likewise, the Petitioners are interconnected with other telecommunications carriers in a limited number of ways and, according to Ms. Ibaugh, have limited options for directing their traffic to other telecommunications carriers. For example, a Petitioner may originate Extended Area Service ("EAS") calls (treated as local exchange service calls for its customers) that are transited by a large-size ILEC and terminated to another LEC over EAS facilities. Alternatively, Ms. Ibaugh stated that an RLEC may treat the call as an interexchange service call to be terminated to another LEC/wireless carrier by an interconnecting interexchange carrier ("IXC"). If a call to a specific number is treated as a local exchange service call today, according to Ms. Ibaugh, the call will not, however, necessarily retain that treatment if the number is ported to a wireless carrier without a presence in that local calling area.

In addition to interconnection issues being raised by the FCC's intermodal porting decisions, Ms. Ibaugh also noted that the *November 10 Intermodal Order* raised an operational issue with respect to "rating" of calls made to a number that had been ported to a wireless carrier. She noted that the Petitioners do not understand exactly how they are supposed to treat (under their effective intrastate tariffs) a ported call that, in a pre-porting environment, is routed as a "local exchange" call and, therefore, treated as part of their local exchange service offering, but post-porting is routed as a "interexchange service" call and, therefore, rated by the IXC as a toll call. She also noted that some of the Petitioners are not currently able to discern which number is ported and which number is not. These concerns, in Ms. Ibaugh's view, were also shared by the Commission when it acknowledged there would be problems associated with rating of wireline ported numbers to wireless carriers outside of ILEC rate centers. She specifically noted the following language from one of the Commissions' prior orders.

If a new LEC allows NXXs to be ported outside the ILEC's rate center area, other carriers would not be able to rate calls to such customers correctly using current rating and billing methods. We affirm the ILEC rate center/rate district limitation for wireline service provider portability in Indiana, including scenarios such as that discussed by Ms. TerKeurst during cross-examination. As Sprint PCS points out, problems arising due to the differing rate centers of wireless and wireline carriers will need to be resolved before full integration of wireless number portability.

Cause No. 41083, pp. 7-8, June 19, 1998.

Ms. Ibaugh noted that LECs do not have "local" rating capability, as they provision their local exchange services based on geographic areas in which the called and calling parties are located, including where specific Commission-prescribed regulations are met and Commission approval is received, EAS calls between two different exchanges. Moreover, for the vast

majority of the Petitioners there is no need, in Ms. Ibaugh's view, to rate (on a minute-of-use or call basis) local exchange calls because "local" calling is based on unlimited calling without any "rate" per minute-of-use or call.

Complicating this issue, in Ms. Ibaugh's view, was the disparate method between how LECs utilize rate centers versus how wireless carriers use them. Ms. Ibaugh noted that wireline rate center areas are used to measure the distance from one switch to another. Thus, the originating and terminating rate centers determine how a distance sensitive rated call is "rated" to customers. A wireline rural LEC ("RLEC") rate center point is associated with the local exchange area served by a single switch. Ms. Ibaugh pointed out that wireless providers do not use these conventions, but instead usually have one switch that provides wireless service throughout numerous wireline rate centers, across an entire state, or the vast portion of one or more states. Ms. Ibaugh also noted that wireline carriers usually use a specific set of numbers for service exclusively within a specific rate center area, *i.e.*, an exchange. As such, a wireline NPA-NXX is associated with a specific geographic area in which the LEC provides service to end users. At times, LECs also use the Local Exchange Routing Guide ("LERG") to identify the association of NPA-NXXs with a specific rate center area. However, wireless carriers may have switches that encompass several wireline rate centers. According to Ms. Ibaugh, wireless providers may also associate one of their NPA-NXXs with a wireline rate center – the so-called assignment – even though the numbers reside at a switch physically located away from the rate center. Similarly, Ms. Ibaugh stated that wireless carriers typically do not follow any guidelines for assigning these numbers to their subscribers, absent some specific arrangement with a particular LEC (which, in turn, is included within the interconnection arrangement that the wireless carrier has with the specific LEC). With respect to this latter point, Ms. Ibaugh also noted that SBC Indiana has established a Wireless Services Tariff to meet its interconnection needs in which procedures for wireless interconnection and NPA-NXX assignment are maintained.

Concluding her discussion of "rate centers," Ms. Ibaugh noted that there is currently a petition pending before the FCC seeking a declaratory ruling about the impact of designating different rating and routing points with respect to wireless carriers' use of NPA-NXXs and their relationship to rate center areas as defined for wireline LECs. Ms. Ibaugh also noted that the FCC found that the concerns about rating and routing were outside the scope of the *November 10 Intermodal Order*.

Ms. Ibaugh next turned to the issue of how wireline-to-wireline LNP had generally been implemented by the Petitioners. While a small number of the Petitioners had received requests to implement wireline-to-wireline LNP via the *bona fide* request ("BFR") process, she testified that typically only the query portion of LNP had been implemented by the Petitioners and then only in an EAS area where the large-size ILEC had, in fact, begun to port numbers. This query function was performed to ensure that the call was properly routed to the carrier that served the end user being called, and the Petitioners generally contracted with the larger LEC to perform this function (a process that Ms. Ibaugh referred to as default routing). These database queries were required to be performed by the "N-1" carrier. If a Petitioner now desired to do the query functions and the related activities itself, Ms. Ibaugh testified that the Petitioner would need to

implement the necessary N-1 number portability protocol. This would require establishing a relationship with NeuStar that operates the nationwide LNP database and provides the ability for downloads of its database used to ensure proper routing of calls. Just as in the case of with interconnection, however, Ms. Ibaugh noted that these arrangements do not occur automatically. Rather, a RLEC must establish an interface with NeuStar or an intermediary administrative entity (such as Illuminet, Inc.). For the Petitioners, this interface requires that they negotiate contracts with NeuStar and/or the intermediary for interconnection and compensation. In Ms. Ibaugh's view, most of the Petitioners had yet to establish this relationship with either the LNP database administer or an intermediary administrator for LNP purposes.

Ms. Ibaugh testified that the Petitioners would have to overcome substantial technical, operational, administrative and financial issues in order to comply with the intermodal portability requirements of the *November 10 Intermodal Order*. These issues included the installation of the necessary software and/or hardware upgrades required to support LNP; employee training; internal testing and trials of the number portability capability end user billing system modifications (such as designating a ported telephone number as non-assignable in the billing system, although the telephone number will not be billed); "back office" functions such as data storage and processing and/or negotiation of a contract with a database provider for LNP; and network reconfigurations. Each Petitioner, according to Ms. Ibaugh, had provided this information to the Commission either through an attachment to the Petition or in response to the Commission's November 21, 2003 data request.

Even if these issues were addressed, however, Ms. Ibaugh noted that the outstanding issues of wireless interconnection, the resulting service treatment and routing of calls, and appropriate cost recovery still remained unresolved. To this end, Ms. Ibaugh asserted that additional transport costs may be associated with routing of ported numbers, because the Petitioners may have to route calls in unconventional ways and cost recovery mechanisms should be in place. Ms. Ibaugh also noted that absent an interconnection arrangement that included recovery of such costs, she believed that a question also arises regarding the Petitioners' ability to continue to provide quality telecommunications services to their customers. She noted that the Petitioners presently have no number portability End User Surcharges, because they have not been directly providing LNP to their end user customers. Through these surcharges, Petitioners would be able to recover costs associated with LNP right to use fees, translation work, LNP feature software, protocol Analyzer for LNP Testing, LNP Query Charges, Service Management Links or SOA Service Bureau costs, OSS upgrade costs for billing and service orders. Ms. Ibaugh further stated that the End User Surcharge would be established by each Petitioner in its interstate access tariff.

Finally, Ms. Ibaugh noted that she not aware of any demand by end users of the Petitioners for intermodal porting. She noted that the FCC's most recent news release about wireless LNP indicated that less than five percent (5%) of a total of 2,400 wireless portability complaints involve delays in porting numbers from wireline carriers to wireless carriers, citing to *Wireless Portability Complaints: Approximately 2,400 Consumer Complaints Since Porting Began On November 24*, FCC News Release, December 29, 2003. She stated that whether this

low percentage was due to lack of overall demand for ILEC provision of wireline-to-wireless LNP had not been reported in the release.

Ms. Ibaugh concluded her testimony by stating that the Petitioners are asking the Commission to give each RLEC sufficient time in which to become LNP capable and sufficient time to allow for further clarification of substantive issues still unresolved by the FCC's actions. Further, each of the Petitioners is requesting suspension of its intermodal porting obligations until such time as the unresolved issues are resolved. According to Ms. Ibaugh, the issues that needed to be resolved include: (1) the lack of adequate billing procedures (including the billing of issues associated with a wireless carrier providing interexchange toll service as well); (2) wireless interconnection; (3) service treatment and routing of calls; and (4) appropriate cost recovery.

2. Testimony of Steven Watkins

Mr. Watkins testified that the FCC's January 16, 2004 order validates the Petitioners' concerns that formed the basis for their suspension requests. According to Mr. Watkins, the *January 16 Intermodal Order* reflected the FCC's recognition that there are network and operational conditions between smaller rural LECs and wireless carriers that warrant further evaluation. Mr. Watkins suggested that given the specific network and operational characteristics of the Petitioners and the incomplete conclusions contained in the *November 10 Intermodal Order*, there still remained uncertain intermodal porting requirements that, if not suspended, would subject the Petitioners to adverse economic conditions and unnecessary economic burdens and harm. Mr. Watkins believed that the interests of all parties, including the Petitioners, their customers, and policymakers, would be served by the grant of the suspension. Accordingly, Mr. Watkins stated that the Petitioners wanted the Commission to suspend their respective obligations to commence intermodal porting until the issues pending before the Courts related to the apparent directives contained in the *November 10 Intermodal Order* were finally resolved, including expected further action by the FCC on these issues.

Mr. Watkins noted that a wireless carrier could still seek interconnection with any of the Petitioners as provided for under the Act in order to arrive at mutual terms and conditions for the establishment of intercarrier network connectivity, and would not preclude either a Petitioner or a wireless carrier from taking positions on any unresolved issues arising from the negotiations. Such arrangements, in Mr. Watkins's view, would move carriers closer to resolving issues that were critical to a successful implementation of intermodal porting.

In his view, the requested relief would preclude the potential waste of resources in an attempt to implement what he felt were currently a confusing, incomplete, and inconsistent set of apparent intermodal porting requirements. The requested relief would also be consistent with the public interest in Mr. Watkins's view, as it would recognize the infeasibility of the Petitioners moving forward with efforts based on unknown and ambiguous FCC directives and would avoid the significant adverse economic impact on the Petitioners' end users and the undue economic burden that will result from an attempt to comply under the uncertainty associated with the FCC's intermodal directives.

To place his discussion in context, Mr. Watkins described the differences between "Service Provider Portability" (which is defined in the Act as the ability for an end user to keep his/her telephone number at the same location when switching providers) and "Location Portability," which is not defined in the Act. Location Portability, according to Mr. Watkins, raised a number of geographic and other implementation issues that go beyond those associated with Service Provider Portability. For example, Mr. Watkins asserted that with Location Portability there was no longer a relationship between the NPA-NXX of the telephone number and the geographic area in which an end user obtains service using that telephone number. According to Mr. Watkins, this was contrary to how carriers' services are currently provisioned. Mr. Watkins agreed with Ms. Ibaugh that LECs provision their services based not only on specific geographic areas but also on NPA-NXXs. Mr. Watkins stated that the breaking of the relationship between the geographic area and the telephone number that arises with Location Portability would result in carriers being unable, with current technology, to determine the proper service treatment of calls.

For example, Mr. Watkins noted that with Location Portability and under current technical capabilities, a carrier would not know whether a call to a ported number is to a location that is included within the local calling area services offered by the LEC to its end users (such as in an EAS arrangement) or whether the call is to a distant location that would be an interexchange call subject to provision by the end user's preferred IXC. In the former type of call, Mr. Watkins stated that the call would be treated as a "local service" call if the two end users were physically located within the local calling area (including authorized EAS exchange areas). In the latter example (*i.e.*, where the call is a "toll" call), he asserted that the call is subject to "equal access," routed to the end user's presubscribed long distance carrier, is subject to the terms of either intrastate or interstate access tariffs, and the end user is charged a rate for the call determined by the end user's IXC. Due to the real world, real-time incapability of knowing the locations of the two end users involved in the call, Mr. Watkins felt that implementing any form of Location Portability would wreak havoc on the telephone companies and the end users they serve. Likewise, absent this real time capability, Mr. Watkins believed that end users would not be able to know what charges they are incurring and the LECs would not know how to recover their costs related to the call.

Mr. Watkins defined "number portability" as a function and not a service. According to Mr. Watkins, when a call is made to a ported number, number portability is the function of querying a database to determine the identity of the carrier that is serving the end user using the specific number in question. In his opinion, however, he felt that function does not answer the question of how the call will be completed. Thus, number portability cannot, in Mr. Watkins' view, be divorced from the completion of the call. Consequently, if there is no established interconnection arrangement with the carrier to which the number has been ported, there likely will be no available arrangement for the delivery directly to that carrier.

Mr. Watkins also testified that, in his opinion, the FCC recognized that State Commissions have authority to suspend and/or modify smaller telephone companies' obligations pursuant to Section 251(b)(2) of the Act. Citing to a 1997 FCC decision, Mr. Watkins noted that the FCC referenced Section 251(f)(2) and indicated that if State Commissions

exercise their authority to suspend, "eligible LECs will have sufficient time to obtain any appropriate Section 251(f)(2) relief as provided by the statute." Mr. Watkins also noted that, based on his review of the *November 10 Intermodal Order* and the FCC's subsequent decisions, he did not find any place where the FCC had reversed this prior statement.

Mr. Watkins next testified as to the implementation issues that were raised for the Petitioners with respect to intermodal porting. For example, Mr. Watkins noted that wireless carriers seeking to have numbers ported to them by a LEC may not have any existing service arrangements with that LEC in the specific geographic area where the wireline LEC provides service using that number. This was a concern, according to Mr. Watkins, because under some potential interpretations of the *November 10 Intermodal Order*, the LEC would be required to transport traffic to the wireless provider and incur the costs associated with that transport. In addition, Mr. Watkins asserted that there was a need for additional time by most of the Petitioners in order to establish internal administrative functions for the proper processing of orders to port a number, as well as make arrangements to access necessary databases where carrier identifications associated with a given number reside. Although Mr. Watkins noted that these last two issues were not necessarily insurmountable, they did entail real costs that would, in turn, be recovered through end user rates during a time when no one knows with certainty what the ultimate implementation should be. Further, Mr. Watkins expressed a concern that allowing intermodal porting may, in effect, be requiring Location Portability unless the wireless user intends to fix the location of her or his wireless phone.

Mr. Watkins asserted that none of these issues were fully addressed by the FCC in its *November 10 Intermodal Order*. Moreover, Mr. Watkins felt that many of the FCC's statements in its recent orders on number portability, specifically with respect to service locations of wireline LECs, rate center areas (otherwise known as exchange areas), the geographic scope of the operations of wireless carriers, and mobile users, are inconsistent with the facts confronting the Petitioners, previous FCC conclusions, and existing regulation. Mr. Watkins disagreed with those suggesting that the Petitioners' intermodal porting obligations were clear, pointing to the fact that the FCC had yet to resolve the issues of the disparity in geographic service areas between wireline and wireless carriers regarding intermodal porting. Through his testimony, Mr. Watkins recited the history of actions taken by the North American Numbering Counsel ("NANC") and the FCC in 1996, 1997, 1999 and 2000. To Mr. Watkins, those actions made clear that the industry could not reach consensus on a resolution of the rate center area disparity issues, and even though the FCC expected recommendations, none were made.

In light of these facts, Mr. Watkins stated that there had been no FCC proceeding that had allowed the Petitioners to identify and comment on the remaining issues surrounding intermodal porting. To him, it appeared that the *November 10 Intermodal Order* resulted in requiring a new form of number portability that had not been fully explained, and the Petitioners had no reason to believe that such requirements had yet been proposed. According to Mr. Watkins, the FCC's intermodal decision still does not answer fully and clearly what obligations the Petitioners have when there is no wireless carrier arrangement in place "at the same location" (which is the situation confronting most of the Petitioners), nor do they answer the obvious Location Portability aspect of mobile service. Further, the FCC's actions do not address the remaining

rate center disparity issues articulated by the NANC workgroup. These uncertainties, in Mr. Watkins' view, raised the distinct specter that the Petitioners will be making human and economic investments and expending real work resources all in an effort to make a good faith effort to comply with directives that are unclear. This problem is magnified, according to Mr. Watkins, based on his understanding that few, if any, wireline customers of the Petitioners have requested a number be ported for wireless use. Thus, to him a real world concern exists that these costs could be incurred and would be reflected in end user rates without any real purpose or potential end user benefit.

Mr. Watkins also agreed with the positions addressed by Ms. Ibaugh on several issues. First, he noted that, generally, the Petitioners had not been subjected to requests for number portability from wireline competitive LECs, as is the case for the Bell operating companies and other large LECs. As a result, many of the Petitioners had not deployed the hardware and software or taken all of the necessary implementation steps and testing to support LNP in their service territories. In light of the uncertainty associated with intermodal porting that he had described, Mr. Watkins stated that there had been no reason for the Petitioners to expend financial and administrative resources to deploy intermodal portability (except where they were perhaps doing so for wireline-wireline porting).

Second, Mr. Watkins agreed with Ms. Ibaugh that deployment of LNP software does not address all of the unresolved issues. For example, he noted that the *November 10 Intermodal Order* does not automatically create interconnection arrangements between a Petitioner and the wireless carriers, and does not answer how calls to ported numbers of mobile users will be treated from a service definition basis, how such calls will be transported to locations beyond the LECs' service territories, and over what facilities these calls will be routed. As such, Mr. Watkins stated that the *November 10 Intermodal Order* neglects to address specific operational and network characteristics of the smaller LECs such as the Petitioners. To demonstrate this point, he referenced a statement made by the FCC in a subsequent November 20, 2003 order on number portability denying a petition challenging that decision:

. . . [P]etitioners assert that there is no established method for routing and billing calls ported outside of the local exchange. We note that today, in the absence of wireline-to-wireless LNP, calls are routed outside of local exchanges and routed and billed correctly.

Mr. Watkins testified, however that contrary to the assumptions contained in this statement, the FCC apparently failed to recognize that the small LECs like the Petitioners are physically and technically limited to transporting traffic to points of interconnection on their existing network that are no further than their existing service territory boundaries. Mr. Watkins stated that the transport beyond the Petitioners' service area boundaries is provided by IXC's, not by the Petitioners LECs, and the involvement of the Petitioners in such calls is limited to the provision of network functions within their own networks. As such, for calls destined to points "outside of the local exchange," the IXC chosen by the end user is responsible for the transport and network functions for the transmission of the call beyond the Petitioner's network and are both routed and rated by that IXC.

Third, Mr. Watkins agreed with Ms. Ibaugh that the FCC's discussion regarding rating in the context of intermodal porting could not be reconciled with how the Petitioners operate. Specifically, Mr. Watkins pointed to the FCC's discussion at paragraph 28 of the *November 10 Intermodal Order*, in which the FCC stated that "calls to the ported number will continue to be rated in the same fashion as they were prior to the port." Mr. Watkins felt, however, that a Petitioner could not unilaterally accomplish this result. In his view, just as the introduction of an EAS route involves the establishment of interconnection and network and business arrangements between two carriers, the ability to exchange local exchange service calls with a wireless carrier also required the establishment of the necessary terms and conditions under which traffic may be exchanged. According to Mr. Watkins, the possibility exists that the FCC assumed that, like the larger LECs, there already existed interconnection arrangements in place between the wireless providers and small LECs like the Petitioners. Mr. Watkins stated that assumption, however, is incorrect, and absent an established network or business arrangement in place with the originating wireline LEC, he felt that calls to a ported number cannot be treated the same as they were prior to the port.

Mr. Watkins also opined that the FCC's further statement that routing and rating of "calls to ported numbers . . ." should be "no different than if the wireless carrier had assigned the customer a new number rated to that rate center" is, with respect to the Petitioners, also based on improper assumptions. He asserted that generally the Petitioners have only one available option for the completion of calls to distant locations. In his opinion, in those instances where a wireless carrier has no established interconnection arrangement with the originating LEC, the routing and rating of a call "to a new number rated to that rate center" assigned to a mobile user of the wireless carrier would be determined by the end user's chosen IXC, and the originating LEC has no involvement in the rating of calls. Mr. Watkins offered that the FCC's directive may make sense to the extent that the criterion for calls to wireless carriers with no interconnection arrangement in place (*i.e.*, "no different than if the wireless carrier had assigned the customer a new number rated to that rate center") means that the call will be treated the same as any other call to a wireless carrier that has no interconnection arrangement in place (*i.e.*, handed off to the chosen IXC). However, Mr. Watkins felt that such an interpretation does not resolve the other interconnection issues between the wireless carrier and the affected LEC.

Mr. Watkins agreed with Ms. Ibaugh over the importance of the concept of rate center areas to the Petitioners, as much of the FCC's discussion and apparent intermodal directives rely upon the concept of a "rate center" area. He also noted that telephone number codes (NPA-NXXs) are assigned and associated with rate center areas with the assumption that these numbers will be used to provide service exclusively within that rate center area (except in the case of wireless carrier mobile users). In Mr. Watkins' view, the use of rate centers for intermodal porting was at the heart of the geographical rate center area disparity issue because wireless carriers may not use the NPA-NXX to provide mobile service to the end user in the same rate center area with which the NPA-NXX is associated for wireline service. Mr. Watkins explained that the concept of relying upon rate centers and the local exchange routing guide ("LERG") is voluntary. According to Mr. Watkins, LECs are free to provision their own local exchange carrier services on an individual case basis, based on specific geographic areas included within their local calling area and the establishment of unique physical trunking between those

geographic areas. To support his position, Mr. Watkins cited to the industry's NPA-NXX assignment guidelines, endorsed by the FCC, which recognized that not all carriers utilize this information for the definition and billing of services. Mr. Watkins also cited to a FCC decision that concluded that the telephone number does not determine the jurisdiction of a call when the calling and called parties' locations do not relate to the geographic area associated with the NPA-NXX.

Mr. Watkins suggested that there was no basis to apply the concept of rate center areas to wireless carriers because of the mobile nature of wireless service. Rather, he felt that the physical locations of the end users should govern or, as a surrogate the end user's physical location, the cell site serving the mobile user at the beginning of the call should be used. He indicated that the FCC agreed with this analysis, and cited its October 7, 2003 number portability order related to wireless-wireless porting. The FCC stated at ¶22 that "[b]ecause wireless service is spectrum-based and mobile in nature, wireless carriers do not utilize or depend on the wireline rate center structure to provide service: wireless licensing and service areas are typically much larger than wireline rate center boundaries, and wireless carriers typically charge their subscribers based on minutes of use rather than location or distance." Accordingly, Mr. Watkins asserted that the FCC's conclusion confirmed his view that the specific geographic areas known as rate center areas for wireline LECs have no relevance to the services offered or provided to the typical mobile user of the large wireless carriers.

Like Ms. Ibaugh, Mr. Watkins stated that the FCC had established a mechanism that allows for the recovery of specifically identifiable number portability costs over a specific and limited time period. However, he stated that the potential recovery of costs that would nevertheless be incurred in attempting to comply would be a burden on the Petitioners and their end users. Mr. Watkins expressed this concern particularly with respect to those costs that would qualify for recovery under the FCC's LNP rules, and those costs associated with, in his view, an otherwise unnecessary attempt to resolve the uncertain issues and implement intermodal number portability under those uncertain conditions. Mr. Watkins raised the concern that any end user charge would be assessed to all of the Petitioners' end users regardless of whether any of these end users desire to port numbers to wireless carriers.

Finally, Mr. Watkins addressed the BFRs that Ms. Ibaugh had referenced. Mr. Watkins noted that, regardless of whether there were in fact BFRs issued by wireless providers, the FCC's BFR rules remained unchanged by the *November 10 Intermodal Order*. He also stated that when the *bona fides* of the various requests of the wireless carriers were questioned by some of the Petitioners, the wireless carriers either provided no specific response to the inquiries about specific geographic locations and switch identification or failed to respond at all. That lack of diligence on the part of wireless carriers, in Mr. Watkins' view, raised questions regarding how important the request actually was to them.

In summary, Mr. Watkins believed that the incomplete and unexplained aspects of the *November 10 Intermodal Order* placed the Petitioners in an untenable position. He felt that the Petitioners were being required to implement a set of uncertain and confusing directives that have either not been properly established or logically explained, or are based on assumptions that

are not consistent with the Petitioners' experience and operations, not consistent with the facts, and not consistent with a reasonable understanding of the existing regulations. In Mr. Watkins' view, implementation of the FCC's apparent intermodal directives is infeasible. Even if these issues were resolved, however, he felt that concerns still remain about the routing and completion of calls to intermodal ported numbers, the resulting confusion on the part of customers about how to complete calls and the charges for calls, and the ensuing customer dissatisfaction with the Petitioners as well as with federal and state regulators.

Mr. Watkins therefore suggested that Petitioners be given time to evaluate and implement the directives and that the Petitioners not be overwhelmed by requirements that would direct their resources into efforts attempting to comply with an incomplete set of requirements. Mr. Watkins believed that the Petitioners, their customers, and the Commission would be better served by the grant of a suspension until such time as the requirements can be satisfied in an orderly and thoughtful manner. Absent that approach, according to Mr. Watkins, customers will ultimately bear the harm in the form of greater costs and a redirection of carriers' resources away from other efforts. Mr. Watkins also suggested that these issues should be addressed in the interest of the overall public, not just the interests of a very few customers and wireless carriers that may want wireline-wireless number portability at the expense of other users. A grant of the suspension pending further consideration of the issues raised by the *November 10 Intermodal Order* in coming months would, in Mr. Watkins' view, serve an overall and balanced consideration of the public interest.

B. OUCC Testimony

Mr. Harold Rees filed testimony on behalf of the OUCC on February 17, 2004. In his testimony, Mr. Rees agreed that there were complex issues regarding the provision by the Petitioners of intermodal porting. Mr. Rees acknowledged that the FCC's apparent directives regarding intermodal porting remained ambiguous, most notably those associated with the "routing and rating" of calls to telephone numbers ported on an intermodal basis to a wireless carrier. Further, he confirmed that the FCC, the NANC and the industry workgroups have failed to provide sufficient help in resolving these issues in a manner that eliminates current confusion and inconsistencies.

Mr. Rees also acknowledged that (1) the Petitioners generally have not had to implement wireline-to-wireless LNP; (2) interconnection agreements setting forth the terms and conditions of interconnection do not exist between the Petitioners and either competitive LECs or wireless companies; (3) some of the Petitioners have not deployed the necessary LNP query database functions but instead have had relied upon the larger LECs; (4) EAS arrangements and agreements are generally the only intercarrier arrangements in place (other than the terms generally available under access tariffs) but that these arrangements do not address number portability issues for the Petitioners; and (5) the Petitioners have had no need to incorporate the various support functions associated with implementation of number portability into their operations.

Mr. Rees asserted that the Petitioners' requested relief should not be granted because there was no end date for that relief. He also opined that the intermodal porting obligations were known by the Petitioners when the FCC issued its wireline-to-wireline LNP rules in July of 1996, therefore, the Petitioners should have prepared to implement LNP.

Accordingly, Mr. Rees suggested that the Commission should grant the suspension for a fixed period of time – 90 days – based on a company-by-company showing that demonstrates the company's situation and the reason for the delay. Mr. Rees also suggested that the Commission require Petitioners to provide bi-weekly reports regarding its efforts with respect to intermodal porting in order to continue their suspension. Further, Mr. Rees stated that when the Petitioners can perform intermodal porting, notice to the Commission may be appropriate.

C. Petitioners' Rebuttal

Mr. Watkins filed rebuttal testimony on behalf of the Petitioners on February 24, 2004. While he acknowledged many of Mr. Rees' observations and positions as consistent with the testimony that the Petitioners submitted, Mr. Watkins expressed concern over Mr. Rees' statement that the Petitioners had failed to specify an end date for the suspension. Specifically, Mr. Watkins believed that Mr. Rees may not have appreciated that Petitioners believe the necessary conditions and triggers which for ending the suspension are not within their power or control. Mr. Watkins noted that both the Petitioners and the OUCC agree that there remain complex and unresolved issues including the need for interconnection with wireless carriers, routing and rating of calls to ported numbers, and lack of sufficient direction from the federal policymakers on these issues. However, Mr. Watkins asserted that the Petitioners cannot resolve these issues by themselves, and that there is no timetable established by the federal policymakers or the courts to resolve these matters. Similarly, Mr. Watkins stated that the rating and routing issues would be addressed by the FCC in the future, and only it can bring consistency to the decisions it has entered. Likewise, Mr. Watkins believed that only the FCC can rectify its failure to properly establish requirements from the NANC process. Mr. Watkins also was concerned that the Petitioners do not have the ability to unilaterally implement interconnection arrangements with the wireless carriers. Rather, Mr. Watkins stated his belief that the wireless carriers have the sole power to establish interconnection terms with the Petitioners. He further asserted that most wireless carriers have not pursued the necessary arrangements required to ensure seamless exchange of traffic consistent with the current network realities, facts, and controlling requirements. To this end, Mr. Watkins stated that the FCC concluded at paragraph 34 of the *November 10 Intermodal Order* that wireless carriers should not be required to put in place agreements "solely for the purpose of porting numbers." However, Mr. Watkins stated that in this case there are no terms and conditions whatsoever between the vast majority of the wireless carriers and the Petitioners.

Thus, Mr. Watkins felt that the Petitioners do not hold the key to the timetable under which these events will take place or when these issues will be resolved in a manner that would allow the Petitioners to move forward with intermodal porting in a manner that avoids the unreasonable economic burdens and potential chaos for their customers.

Mr. Watkins also disagreed with Mr. Rees that the Petitioners knew of their intermodal porting obligations in July of 1996. Mr. Watkins noted that while the FCC may have expressed its intention and preference with respect to intermodal porting, the FCC still had recognized that there were complex issues regarding the geographic disparity between wireless carriers and wireline carriers. Mr. Watkins asserted that these issues were among those for which NANC would provide recommendations, but for which no such recommendations had been made.

Mr. Watkins noted that Mr. Rees' concerns over the length of the suspension may have been based on the possibility that there was public demand for porting wireline numbers to wireless carriers. Mr. Watkins questioned that demand. In addition to the FCC's January 28, 2004 Public Notice previously referenced by Ms. Ibaugh regarding the small number of complaints regarding intermodal porting (which Mr. Watkins attributed to the small number of wireline to wireless ports). Mr. Watkins also referenced a report made in the February 9, 2004 online edition of *RCR Wireless News*, which indicated that there had not been as much demand for wireline to wireless porting as may have been initially anticipated. That report referenced a consumer survey report compiled by CFM Direct that found that very few telecommunications customers have switched their wireline phone numbers to wireless, and quoted Barry Barnett, executive vice president of CFM Direct, as stating: "Phone portability should have enticed more landline users to switch to wireless, and although the data we have doesn't look at pre-teens, the owners of landline phones are primarily adults. We don't see adults making the shift." Although Mr. Watkins noted that these anecdotes are representative of the experience in the more urban, top 100 MSAs, he would expect the interest in intermodal porting in rural areas to be even less. Mr. Watkins justified his opinion based on his view that wireless service is less ubiquitous in rural areas, that landline users would be more reluctant to abandon dependable wireline service for a wireless service of less certainty, and, generally, that he felt that users do not abandon their wireline service, in any event, upon their first use of wireless service. Accordingly, as a result of the very limited perceived demand for intermodal porting experienced to date, the higher costs for the smaller carriers, let alone the technical and operational hurdles and unresolved issues recognized by all of the witnesses, Mr. Watkins suggested that a rush to have the Petitioners support intermodal porting at this point lacks a balanced public interest benefit.

Finally, Mr. Watkins did agree with Mr. Rees that it would be reasonable for the Commission to require reporting and updates from the Petitioners to support continuation of their suspension. Mr. Watkins noted, however, that any update and status reporting requirements should be properly confined to avoid administrative burdens, while, at the same time, noting again that the resolution of the issues and the ultimate implementation depended on actions beyond the control of the Petitioners.

D. Sprint Submission

Sprint provided comments in response to the Commission's January 16, 2004 Docket Entry on February 6, 2004.

Sprint requested that the Commission dismiss the Petition based on the additional time that the FCC provided the Petitioners in the *January 16 Intermodal Order*. Recognizing the role

of the Commission under Section 251(f)(2) of the Act, Sprint suggested that the Petition is based on the guise of technical infeasibility. Accordingly, Sprint suggested that the Commission should similarly disregard the same "rate/routing and interconnection related concerns raised by the Petitioners." Sprint also argued that the Petitioners were attempting an end-run around the FCC's actions, and thus any decision that is based on these concerns "would likely be preempted."

Sprint asserted that as both a LEC and wireless provider, it had successfully implemented intermodal porting. Sprint also stated that the Petitioners have had no problem with rating and recording of mobile calls over the "last 20 years." Sprint also asserted that small LECs are making suspension requests as a means to undermine the *November 10 Intermodal Order* by "restricting the porting options" to only those customers where a wireless carrier directly interconnects with the small LEC. In support, Sprint discussed interconnection obligations and their separateness from LNP, the status of FCC consideration of these issues, increases in costs for direct interconnections, reductions of options regarding the routing by small LECs of their traffic, asserted the responsibility of the small LECs for transport costs associated with either direct or indirect routing, and asserted the customer confusion that would be created should the relief be granted.

3. Commission Findings

Prior to reaching the merits of the Petitioners' requests, we address three preliminary matters. First, the Commission accepts AWS' request to withdraw its appeal of the Commission's November 21, 2003 action and we dismiss AWS' appeal with prejudice. Second, T-Mobile has filed to withdraw from this case. We grant that request. Finally, we find that each of the Petitioners has adequately demonstrated that it serves less than two percent (2%) of the nation's access lines, and, therefore, are eligible to seek relief pursuant to Section 251(f)(2) of the Act.

A. Relief Requested

Petitioners request a temporary or permanent waiver of their LNP obligation. If a temporary stay is granted, Petitioners request that it be until six months after the FCC's "full and final resolution of the issues associated with porting numbers between LECs and CMRS providers." *Complaint*, ¶12. In the alternative, Petitioners request suspension of intermodal porting obligations except where

- (a) the requesting entity demonstrates that its use of ported numbers complies with the Act's definition of number portability, and
- (b) the Commission first approves an interconnection agreement between the Petitioner and the requesting entity that establishes the necessary inter-carrier terms and conditions under which such proper and legally-required number porting will be achieved.

Id.

Smithville requests relief from the obligation to port, and states that no process to administer, route and/or connect exists regarding intermodal LNP. *Smithville Complaint*, ¶4. Smithville also requests that the Commission engage in a full-scale investigation into issues related to LNP.

Generally, Petitioners assert that the issues to be resolved are a lack of adequate billing procedures, wireless interconnection, service treatment and routing, and appropriate cost recovery.

B. Guidelines for LNP suspension

Congress gave State Commissions the power to suspend or modify LNP obligations for LECs "with fewer than two percent of the Nation's subscriber lines installed in the aggregate nationwide" if the Commission determines that such suspension or modification:

- (A) is necessary –
 - (i) to avoid a significant adverse economic impact on users of telecommunications services generally;
 - (ii) to avoid imposing a requirement that is unduly economically burdensome; or
 - (iii) to avoid imposing a requirement that is technically infeasible; and
- (B) is consistent with the public interest, convenience, and necessity.

47 U.S.C. 251(f)(2).

To support a request for suspension of the LNP obligation, a carrier must show through "substantial credible evidence" the facts why it cannot meet the scheduled LNP deployment, and provide a detailed explanation of the activities the carrier undertook before requesting the extension to meet the scheduled LNP implementation date. *In the Matter of Telephone Number Portability*, 11 FCC Rcd 8352, ¶ 168 (Release July 1, 1996) ("First Report"). The carrier must identify the switches for which the extension is requested, the time within which the carrier will complete deployment, and a proposed schedule with milestones for meeting that date. *Id.*

C. Economic arguments in favor of suspension

- (i) [T]o avoid a significant adverse economic impact on users of telecommunications services generally;
- (ii) to avoid imposing a requirement that is unduly economically burdensome[.]

As a background, we examine the FCC's position on LNP cost recovery. As set out more fully below, we find that the details required to support cost recovery, of necessity, parallel those required for suspension requests. Ultimately, the issues of economic burden for either a carrier or end user focus on cost recovery, and the commensurate effect on each party. Therefore, we detail the cost recovery analysis, as we find that it is similar to that required of a carrier asserting economic burden as a reason for LNP suspension.

First, we note that despite a request to do so, the FCC has declined to create special categories for the LNP costs of small and rural companies. *In the Matter of Telephone Number Portability*, 13 FCC Rcd 11701 at ¶76 (released May 12, 1998) ("Third Report"). Hence, the Petitioners in this cause are bound by the same cost recovery rules as their larger brethren.

For a provider to recover costs related to LNP, it must first affirmatively answer two questions: *but for* the implementation of LNP, the cost would not have been incurred, and that the costs were incurred *for the provision of* LNP. *In the Matter of Telephone Number Portability Cost Classification Proceeding*, 13 FCC Rcd 24495 ¶10 (adopted December 14, 1998) ("Cost Classification Order"). This stricture was created to

avoid overcompensation of LECs for their costs, as LECs already recover the cost of general network upgrades through standard cost recovery mechanisms. The [FCC], therefore, concluded that the incumbent LECs should not be allowed to recover these same costs through both federal number portability charges, as well as through price caps or rate-of-return recovery mechanisms.

In the Matter of Telephone Number Portability, 17 FCC Rcd 2578, ¶7 (released February 15, 2002).

A cost must be new to the carrier to be recoverable. *Cost Classification Order* at ¶18. There are three carrier-specific cost categories: dedicated LNP costs, joint costs, and incremental overheads. *Id.* at ¶20. Dedicated costs are defined as incremental costs of investments and expenses dedicated exclusively to LNP. Examples of dedicated costs include LNP software and the costs of SCP/STP.¹ *Id.* at ¶21. Joint costs are those incremental costs associated with funds directly supporting LNP, as well as one or more other functions. *Id.* at ¶22. Joint costs may be difficult to determine, as a carrier must distinguish and allocate between portable and non-portable costs; a carrier may be required to subtract out a portion of cost attributable to LNP. *Id.* at ¶23. A LEC must show a direct correlation between a claimed new overhead and provision of LNP in order to recover any cost. *Id.* at ¶33. Further, costs must be allocated between LNP services, such as querying services/data dips, switch upgrades, etc. *Id.* at ¶40.

Costs that support non-portability-related-functions by a carrier are to be considered system upgrades by a carrier, and must be recovered through regular rates and charges. *Id.* at ¶24. As the FCC noted, "[t]hat some LECs have delayed making updates to their networks, for which a recovery mechanism has already been provided, does not authorize them to recover those costs now through federal LNP charges." *Id.* at ¶27.

¹ LNP costs must be broken down as follows: (a) shared individual costs; (b) service management system (SMS) signaling link; (c) signaling control point (SCP); (d) SCP link; (e) signaling transfer point (STP); (f) STP link; (g) signaling switching point (SSP); (h) end-office switches; (i) tandem switches; (j) OSS modification for support of narrowly defined LNP functions; and (k) OSS modifications supporting other functions that a LEC claims are being used for the provision of portability. *Cost Classification Order* at ¶50.

LNP costs must be further separated into those that are recurring, non-recurring, and on-going. *Third Report* 13 FCC Rcd at ¶61. Non-recurring charges include the development of hardware and software to accomplish LNP. *Id.* Recurring costs are those that re-occur on a monthly or annual basis, such as maintenance, operation, security administration and physical property. *Id.* On-going costs are those for the uploading, downloading and querying of the portability databases. *Id.* Such upgrades as SS7, or installation of AIN or IN software, are costs that do not relate to LNP, because the costs are associated with a wide range of services unrelated to LNP, such as CLASS. *Id.* at ¶62. To the extent that a cost is related to LNP, and benefits other services, the cost must be allocated among the different services. *Cost Classification Order* at ¶23.

We now examine Petitioners' responses to our requests for information regarding LNP costs.² First, we note that a number of Petitioners provided documentation with cost estimates that post-dated the complaint; some provided no documentation on cost at all.³ To support a suspension request, carriers must have taken appropriate action to prepare for LNP *prior* to the LNP deadline, and must show what efforts they have made to that end. *First Report*, 11 FCC Rcd 8352, at ¶ 168. We saw no evidence that met that standard here.

Other Petitioners⁴ responded with lump sum amounts that offered no breakdown whatsoever; the projected cost was provided without summation or backing documentation. For example, in response to a request from the Presiding Officers for clarification, one Petitioner responded that the cost was for total replacement of a switch. No allocation between LNP and other functions was listed. As we noted, general system upgrades are costs includable in base rates; if the functionality in question was required "*for the provision of LNP*," the cost must nonetheless be allocated accordingly.

Still other Petitioners provided cost information, but we found no evidence of cost allocation or the impact on customers or carrier, and many of these estimates were admitted to be incomplete.⁵ Some carriers had installed LNP-capable software or had chosen to default-route their LNP traffic, but estimated additional, unspecified costs.⁶

Ultimately, the Petitioners' evidence offered in support of economic burden fail for the requisite level of detail. A lump sum, without context, is meaningless. To advance an argument of economic burden, carriers must of necessity particularize their concerns with the projected impact on carrier and/or user. This is not for lack of notice on the subject, as the FCC's cost classification and recovery orders could not have been more specific. *See generally, Cost Classification Proceeding*, 13 FCC Rcd 24495; *In the Matter of Long-Term Telephone Number*

² Petitioners' responses to the Presiding Officers' data requests were made part of the record at the evidentiary hearing; all references in this section are from those responses.

³ In this category are Bloomingdale (which, while not a party, responded to our data requests), Monon, and Sweetser.

⁴ In this category are NITCO, Washington Co., West Point, Yeoman, Pulaski White, Sunman, Centurytel, Citizens, CCRTC, Craigville, and Geetingsville (which, while not a party, responded to our data requests).

⁵ In this category are Swayzee, CCI, New Lisbon, and Daviess Martin.

⁶ In this category are Perry-Spencer and Smithville.

As to the impact on end users, Petitioners' witness Mr. Watkins asserted that the potential of an LNP surcharge "would burden the Petitioners and their end users. These charges will be assessed to all of the Petitioners' end users regardless of whether any of these end users desire to port numbers to wireless carriers." *Watkins Direct* at A. 41. Unfortunately, Petitioners did not provide evidence of what a potential end user LNP surcharge would be, and therefore we cannot gauge any potential impact. To evidence a potential economic burden caused by LNP, a carrier must include an analysis of incremental costs or allocation. Key terms regarding pricing cannot be left undefined, leaving the Commission to guess at their meaning. Including undifferentiated LNP costs from other states does not assist the Commission in determining the effect of LNP within the Commissions' jurisdiction. Likewise, pricing in vague lump sums, expressed in terms of per line or per interface cost, does not provide the requisite level of the net cost of LNP after appropriate parsing out of unrelated particulars. We are left with no determination of what LNP ultimately means to the company or end user.

We thus find unpersuasive Petitioners' argument that their LNP obligation should be suspended because of the possibility that their end users will pay an LNP surcharge, yet not actually use LNP. Were we to follow this logic, we would be shielding Petitioners, and their customers, from competition, an outcome contrary to the goals of TA '96. Our conclusion is further buttressed by the FCC finding that the local number portability administrator could assess shared costs on *all* eligible telecommunications carriers, not just those with existing long-term number portability contracts. *Id.* at ¶2.⁷ The FCC held that recovery of LNP costs from RLEC end users would not begin until the users "were reasonably able to begin receiving the direct benefits of long-term number portability." *In the Matter of Telephone Number Portability*, 17 FCC Rcd 2578 at ¶41. However, the FCC has noted that LNP has greater benefits than simply for the end user who chooses to port his or her number. Specifically, LNP implementation overlaps with number conservation; once LNP is implemented for carriers within a given service area, thousand-block number pooling is possible. *See, In the Matter of Numbering Resource Optimization; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Telephone Number Portability*, 18 FCC Rcd 12472 at ¶¶6, 18-19 (released June 18, 2003). While small carriers such as Petitioners had been exempted from pooling requirements, once an LNP request has been received, they *must* engage in pooling. *Id.* Number optimization through thousand-block number pooling promotes the important public goal of preventing unnecessary area-code exhaustion. *Id.* at ¶15. Hence, even if a particular end user does not use LNP directly, the indirect benefits are present and appreciable.

The FCC foresaw that the implementation of LNP would produce problems, and to that end specifically directed carriers to examine the leasing of LNP capability from neighboring LNP-capable LECs, should they choose not to upgrade their own network. *First Report*, at ¶101. These options would support the resolution of one of Petitioners' chief complaints – sinking

⁷ This order also controls the appropriate charges a carrier can impose for performing a querying function for another carrier. *In the Matter of Telephone Number Portability*, 17 FCC Rcd 2578, at n.12.

investment into technology, with an uncertain return. Additionally, the FCC envisioned that carriers could lease excess capacity for LNP to other carriers, thus offsetting some LNP cost that might otherwise be passed on to end-users. *Third Report*, at ¶138. The FCC noted that system capacity drives LNP as related to switching and SS7, and that N-1 carriers might well choose to “dump” unqueried calls on an adjacent LEC during busy times, rather than expand system capacity. *Cost Classification Proceeding*, 13 FCC Rcd 24495, ¶¶41-42. Thus, the FCC examined the economic concepts central to Petitioners complaints – and set out alternatives with an eye to reducing the economic impact.

Certainly the Commission recognizes that areas of the law regarding LNP are in flux. Rather than make infrastructure investments, the RLECS can use the major LECs’ LNP querying services. The Petitioners here must make a choice: either invest in their own networks for the inevitability of some form of LNP in the future, or contract with another entity upon receipt of a bona fide request.⁸ We therefore find that Petitioners have not met their burden for a grant of suspension based on economic burden, to either themselves as carriers or to their end users.

D. Arguments of technical infeasibility

“[T]o avoid imposing a requirement that is technically infeasible[.]”

For a claim of technical infeasibility, a carrier must specifically describe the technical hurdle at issue, including whether or not upgrades to switches are needed, network facilities, or OSS. *November 10th Intermodal Order*, ¶42.

(i) Geographic (location) portability

First we examine Petitioners’ complaint that the FCC’s intermodal LNP mandate impermissibly imposes geographic portability. Mr. Watkins asserted that wireless numbers cannot be ported to wireline because “the wireless carrier may have associated the number with the wire center outside of the wireline carrier’s service area, so under the current system, it’s impossible to port from wireless back to wireline, so we have this competitively disparate arrangement.” Tr. at p. 24, lines 12-25. While acknowledging that the FCC had recognized this point in its *November 10th Order*, Mr. Watkins also said that the FCC’s resolution of wireless-to-wireline porting was “adopt[ing] the requirement although it isn’t fully explained.” Tr. at 25, lines 15-16.

We note that the FCC did *not* adopt wireless-to-wireline porting where there is a rate center disparity, and it specifically absolved from liability any carrier who received, and rejected, such a LNP request. As well as issuing a NPRM on the issue, the FCC went on to note:

[W]hile the Commission noted that NANC should consider intermodal porting issues of concern to wireless carriers, it did not impose limits on wireline-to-

⁸ A carrier need only provide LNP after receiving a bona fide request from another carrier. *In the Matter of Numbering Resource Optimization; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Telephone Number Portability*, 18 FCC Rcd 12472 at ¶8, n.17 (released June 18, 2003).

wireless porting while NANC considered these issues, nor did it give up its inherent authority to interpret the statute and rules with respect to the obligation of wireline carriers to port numbers to wireless carriers. Accordingly, we find that in light of the fact that the Commission has never adopted any limits regarding wireline-to-wireless number portability, as of November 24, 2003, LECs must port numbers to wireless carriers where the requesting wireless carrier's coverage area overlaps the geographic location of the rate center to which the number is assigned.

November 10th Intermodal Order, ¶25.

The FCC chose not to delay or prevent implementation simply because some carriers might experience technical difficulties of such a magnitude that porting would be unachievable. *Id.* at ¶27. The FCC noted that it would not hold either wireline or wireless carriers liable for a failure to port under those circumstances, and held that "porting under these conditions will provide customers the option of porting their wireline number to any wireless carrier that offers service at the same location." *Id.* at ¶22 (emphasis added).

If porting a number from wireline to wireless constituted *per se* geographic portability, the whole premise of intermodal portability would be an artificial construct. Surely the FCC did not intend this outcome, especially with the specific stricture regarding rate center and geographic coverage limitation imposed, and a NPRM pending on rate center disparity. *Id.* at ¶11. While Petitioners have made allegations of technical infeasibility due to "geographic portability," they have not supported those allegations with the requisite evidence. *Id.* at ¶42. We therefore decline to grant relief on these grounds.

Finally, we note Mr. Watkins' assertion that the FCC's January 16, 2004 order granting temporary relief to certain 2% carriers "recognizes that there are network and operational conditions between smaller rural LECs and wireless carriers that warrant further evaluation." *Watkins Direct*, A.6. The companies in that order were 2% carriers within one of the top 100 MSAs who had not previously received any bona fide requests, and had not implemented even wireline-to-wireline porting. These carriers had not implemented any of the network upgrades necessary, and were requesting additional time within which to update their networks accordingly. *Jan. 16th Order* at ¶8. Even so, the FCC granted a limited extension, to match the May 24, 2004 deadline for the RLECs. *Id.* at ¶12. Petitioners in this cause have already been granted the very relief that Petitioners in the *Jan. 16th* order have received. The FCC came to no new conclusions after that. Therefore, we do not see the January 16th Order as supporting Petitioners' claims for relief.

(ii) Rating, routing, and interconnection

We now discuss the interrelated topics of rating, routing and interconnection.

Petitioners argue that LNP cannot be achieved until interconnection agreements (ICAs) are created between them and wireless carriers. The language of the Petition in causes 42529 and 42536 reads:

Even if a Petitioner received a bona fide request from a wireless provider and that Petitioner operates a switch with the technical capability of porting a wireline number to a wireless carrier, **absent the establishment of reasonable terms and conditions with the wireless provider** unresolved implementation problems and uncertainty with respect to FCC requirements render the provision of wireline-to-wireless local number portability unduly economically burdensome or altogether impossible for Petitioners. The resolution of these implementation issues can be established only through the process of negotiating an interconnection agreement and after confirmation of the Act's scope of the duty to provide number portability is received.

Petition, ¶6 (emphasis added).

Likewise, Mr. Watkins made his argument against LNP implementation in the following fashion:

[W]ireless carrier[s] to which the number may be ported may not have any existing service arrangements with the wireline LEC in the specific geographic area where the wireline LEC provides service using that number (i.e., no interconnection arrangement in the geographic area that constitutes 'the same location' under the definition of Service Provider Number Portability.) Under some potential interpretations of the *Nov. 10 Order* and as explained more fully below, this condition makes it infeasible to comply with some of the apparent directives....Petitioners will need...time to establish internal administrative functions...as well as make arrangements to access necessary databases where carrier identifications associated with a given number reside.

Watkins Direct, A.17.

Mr. Watkins went on to assert that the "mere presence of hardware and software doesn't mean LNP can be implemented without resolving arrangements with affected carriers." *Watkins Direct*, at A31. While both he and Ms. Ibaugh admitted under cross-examination that LNP had been implemented by other Indiana carriers, Mr. Watkins qualified that by saying that "it's not clear whether it's technically possible to do it as the FCC intended or as the carriers would intend." Tr. at p. 18, lines 14-16; tr. at p. 51, lines 20-22.

As to the readiness of the Petitioners for LNP implementation, Mr. Watkins stated that some of the Petitioners had "added the [LNP] hardware and the software, but...I don't think they've completed all the tasks." Tr. at p. 19, lines 1-6. Ms. Ibaugh was equally uncertain as to Petitioners' state of LNP preparedness. Tr. at pp. 54-55. Mr. Watkins stated that "there are a number of unresolved issues and confusing aspects, and it will depend upon to what extent those

confusing aspects have been clarified between now and then, and that may be the more important precipitating event as opposed to the hardware and software activity." Tr. at 21, lines 19-25. Mr. Watkins stated that the unresolved issues were those related to interconnection and "what the terms and conditions will be for directing that call." Tr. at 22, lines 19-24. Thus, the resolution of LNP, in Mr. Watkins estimation, centered on issues related to rating and routing – *not* technical feasibility. Tr. at 26, lines 10-15. Ms. Ibaugh agreed that the RLECs primary concern was rating and routing. Tr. at pp. 55-56, 62-64.

Mr. Watkins defined LNP as the ability of a carrier "to identify the carrier that is providing service to an end user with a specific number...the function of querying a database to determine the identity of the carrier that is serving the end user using the specific number in question." *Watkins Direct*, A14. He went on to qualify that definition with the statement that

[LNP] does not automatically answer the question of how a call may or will be switched, routed, and completed. Therefore, number portability answers only half of the question – what carrier is serving the end user being called. That function, however, cannot be divorced from the completion of the call. Put another way, if there is no established interconnection arrangement with the carrier to which the number has been ported, there likely will be no available arrangement for the delivery directly to that carrier.

Id.

By Petitioners' own definition, then, LNP is an issue of number identification through a querying function. As we noted above, that function can be performed by others, and Ms. Ibaugh shared this assessment when she referred to "default routing," in which the ILEC performs the querying function for the smaller carrier.

The FCC has stated quite clearly that a carrier cannot hold LNP hostage by demanding an interconnection agreement of another carrier. "[W]e clarify that nothing in the Commission's rules limits porting between wireline and wireless carriers to require the wireless carrier to have a physical point of interconnection or numbering resources in the rate center where the number is assigned." *November 10th Intermodal Order* at ¶1, ¶24. In elaborating on the lack of any need for interconnection agreements, the FCC found that the act of porting a number could be achieved "with a minimal exchange of information." *Id.* at ¶34. The FCC had previously suggested that carriers could interconnect indirectly by using a third-party carrier as a go-between, with the third-party carrier performing querying and routing functions as necessary. *First Order on Recon* at n. 399. In fact, the FCC was quite specific that if a LEC were to argue that it was unable to port a wireline number to a wireless carrier, where the point of interconnection was *outside* the rate center, it had to have "substantial, credible evidence" as to why it was not technically feasible without an interconnection agreement or numbering resources. *November 10th Intermodal Order* at ¶¶22-23, 29-30.

The FCC quite pointedly noted that porting from a wireline to CMRS without numbering resources or an interconnection agreement within the same rate center did not, in and of itself,

constitute location portability. *Id.* at ¶24. That is because, the FCC noted, the rating and routing of the calls to the ported number remains the same, and wireless carriers are required to maintain the same rate center after a number has been ported to them. *Id.* Most importantly, a dispute over transport costs – the heart of Petitioners' arguments here – does *not* equal a reason to delay implementing LNP. *Id.* at n.75. The FCC stated that no interconnection agreement is required solely to port a number, nor is one required to prevent unjust or unreasonable practices between carriers, due to the high level of competition. Requiring ICAs for LNP implementation would not protect consumers, but would merely delay LNP; ultimately, choosing to forbear from requiring ICAs for LNP was in the public interest. *Id.* at ¶34-37.

In response to the concerns expressed about the routing of calls to ported numbers, the FCC declined to make a determination because:

the requirements of the LNP rules do not differ depending on how calls to the number will be routed after the port occurs. Moreover...the rating and routing issues raised by rural wireline carrier have been raised in the context of non-ported numbers and are before the Commission in other proceedings.⁹

Id. at ¶40.

In subsequently denying wireless carriers prayers for a stay of LNP implementation, the FCC noted that the assertion of rating and routing difficulties was made "without factual backup[.]" The FCC went on to note that "today, in the absence of wireline-to-wireless LNP, calls are routed outside of local exchanges and routed and billed correctly. We thus find that, without more explanation, the scope of the alleged problem and its potential impact on consumers is unclear." *In the Matter of Telephone Number Portability, United States Telecom Assn. and Centurytel of Colorado, Inc. Joint Petition for Stay Pending Judicial Review*, CC Docket No. 95-116, ¶9 (released November 20, 2003). This statement is equally true of the case at bar.

Petitioners' argument is essentially that LNP cannot be implemented until issues of rating and routing are resolved. However, Petitioners' own evidence showed that the issues of rating and routing were being handled in a separate proceeding, and that calls to wireless carriers were being completed by Petitioners now. Tr. at 43, lines 14-18. Mr. Watkins testified that there are no service agreements or ICAs for much of the wireless traffic Petitioners handle currently. Tr. at pp. 43-44. Calls made by Petitioners' customers to a wireless phone located physically elsewhere, but with the same area code and calling area, are being handled either through EAS, IXCs, or direct trunking. Tr. at p. 46, lines 8-17.

Petitioners' arguments regarding rating, routing and interconnection are flawed in another respect. The FCC's pending rulemaking is contemplating a radical revision of intercarrier

⁹ *Citing In the Matter of Sprint Petition for Declaratory Ruling, Obligation of Incumbent LECs to Load Numbering Resources Lawfully Acquired and to Honor Routing and Rating Points Designated by Interconnecting Carriers, Sprint Petition for Declaratory Ruling*, CC Docket No. 01-92 (filed July 8, 2002).

compensation in general.¹⁰ As a consequence, the FCC may well decide that carriers pay their own costs for traffic, or that carriers split costs based on some as-yet-undefined formula. Petitioners' arguments are premised on the state of intercarrier compensation that currently exists. Were we to accord Petitioners' arguments full merit, we would do little to assist in this already-complicated area.

We decline to grant relief on these grounds. Petitioners have not met the burden of proving technical infeasibility.

E. Is consistent with the public interest, convenience, and necessity

While Petitioners have made assertions that the grant of suspension is in the public interest, nothing more than generalized statements have been presented. We note the general allegation of end-user costs; as discussed above, this fails for lack of particularity. We also note the complaint that LNP-capability could be imposed without any of Petitioners' end users benefiting from the functionality. Again, as we noted above, the FCC has held that LNP implementation provides benefits for even those who choose not to port. Hence, this argument does not sustain a finding that LNP suspension would be in the "public interest, convenience and necessity."

We emphasize that we appreciate Petitioners' various concerns of stranded investments and the limited requests for LNP within their service areas. Nonetheless, the FCC has considered and rejected these concerns as well, as we referenced above. We do not minimize RLECs' concerns. We merely point to the abundant evidence that those carriers that choose not to make an investment they feel poorly substantiated may buy the service from another carrier. At such time as the LNP issue is resolved, as Petitioners pray, they may then make the choice to pursue infrastructure improvement to upgrade their networks and servers accordingly. As the FCC has noted, LNP capability serves even those who choose not to avail themselves of it; competition demands that the services contemplated by TA'96 be available to all. Hence, we do not find that indefinite suspension of Petitioners' LNP obligations serves the public interest.

Also, we note that the issue of LNP does not exist in a vacuum, as number conservation imbues our concern for LNP implementation. After the necessary split of Indiana's northern counties into different area codes – a process which was difficult and upsetting for consumers – we are keenly aware that we could face area code exhaustion in other areas of the state as well. LNP allows consumers to retain their numbers, thereby reducing the use of numbers out of the allocated pools. We note the FCC's recent directive on the intersecting topics of LNP and number conservation, in which it stated that "we find that operating in rural service areas (RSAs) does not constitute special circumstances justifying exemption from the pooling and porting requirements." *In the Matter of Numbering Resource Optimization, Telephone Number Portability (Petition of Advantage Cellular Systems, Inc., et al)*, CC Docket Nos. 99-200, 95-116, DA 04-1291, at ¶8 (released May 10, 2004). The FCC went on to find that the delay of LNP

¹⁰ "As a consequence, there may be no reason why both LECs should not recover the costs of providing these benefits [of call termination] directly from their end users." *In the Matter of Developing a Unified Intercarrier Compensation Regime*, 16 FCC Rcd 9610, 9625 (released April 27, 2001).

and pooling requirements was not in the public interest "because it unnecessarily delays the benefits to the public. Implementation of LNP...has promoted, and will continue to promote, competition[.]" *Id.* at ¶10. While these statements were made in the context of CMRS carriers, they are no less true for the RLECs at bar.

We do, however, grant certain Petitioners the *very* limited relief of an additional ninety (90) days from the date of this order to implement LNP, as necessary. We note that a number of Petitioners already have LNP-capable software, switches and infrastructure in place. For those Petitioners, no extension is necessary. For those Petitioners that allege hardship, however, we grant this additional window of time in which to complete the necessary investments, negotiations, purchases, and/or administrative functions necessary to implement LNP upon a bona fide request. We note, as above, that we are not mandating that carriers perform queries themselves, should they so choose to contract that function to another carrier.

This limited additional time will allow carriers to complete implementation and test their systems. The FCC recognized the importance of testing and system reliability in its January 16th, 2004 order, and based its relief in part on those grounds. In so doing, the FCC stated that smaller carriers must "ensure that their upgraded networks work reliably and accurately...it [is] important that carriers implements and test the necessary system modifications to ensure reliability, accuracy, and efficiency in the porting process." *January 16th Order* at ¶¶8-9.

For those carriers that choose to avail themselves of this additional time, we hereby find that each such carrier must report on a monthly basis to the Commission what steps it has taken towards its implementation of LNP. Such report(s) must include, at a minimum:

1. whether or not a bona fide request has been made by another carrier, and the date of such request;
2. the physical infrastructure changes which need to be made (if any);
3. the software required for implementation, if any;
4. the incremental cost of implementation, after allocation of costs to other functions;
5. the status of testing of LNP functions;
6. the on-going cost of implementation (monthly querying costs, upload/download, etc.); and
7. additional elements outstanding for LNP implementation, with a timetable for completion.

This list is by no means all-inclusive, and carriers are encouraged to review the cost-recovery analysis above for a guide to how the FCC expects costs and implementation to be determined, and the categories of items which qualify. We note that such requirements are consistent with the FCC mandate that those seeking a suspension of their LNP obligation do so with specific, credible evidence.

F. Alternative relief requested

We now rule on Petitioner's alternative requests for relief. The first asks that porting obligations be suspended unless a "requesting entity demonstrates that its use of ported numbers complies with the Act's definition of number portability." We note that Petitioners themselves argue that the FCC wrongly held them responsible for "geographic" rather than "service provider" portability. Given that stance, we cannot imagine how any proposed intermodal porting would not be met by protracted litigation over "the Act's definition of number portability." For the sake of judicial economy and clarity, the Commission declines to entertain numerous docketed proceedings in which carriers might be made to prove their compliance with a definition that is clearly in contention. We therefore decline to grant this requested relief.

We also decline to grant the second request for alternative relief, which asks that interconnection agreements be required prior to LNP. As we noted above, the FCC has stated that a carrier cannot be forced to enter into an interconnection agreement in order to implement LNP. That is not to say that parties cannot enter into interconnections, should they so choose. We merely decline to make it a mandatory part of LNP implementation.

As for Petitioners' request that a temporary stay be granted until six months after resolution of LNP by the FCC, we note that the FCC has chosen to impose porting obligations despite the fact that there are still unresolved issues (recognized by the NPRM on rate-center disparity.) Given that, we decline to wait until a "full and final resolution of the issues." "Resolution," as these Petitioners might define it, could be a long way off.

We also decline to institute an investigation into LNP. To do so would add additional delay to LNP implementation, for which we see no public interest return. The issue of intermodal porting where there is a rate center disparity is already pending in front of the FCC, as is the issue of intercarrier compensation. We see no reason to implement an investigation the results of which would potentially conflict with the pending FCC action.

We note in closing the FCC's very recent order on an LNP waiver request by an RLEC, in which the RLEC was granted a sixty (60) day reprieve for LNP implementation. We note a substantial similarity of position between the Commission and the FCC, as evidenced by the following language:

We find that [Petitioner] has not demonstrated good cause to justify waiving the May 24, 2004 porting deadline [until December 2005]. In particular, we agree with those commenters who argue that [Petitioner] has not shown through substantial, credible evidence that special circumstances warrant an extension of the porting deadline...We find that [Petitioner] has not presented 'extraordinary circumstances beyond its control in order to obtain an extension of time.'.... [Petitioner] has not shown that challenges it may face are different from those faced by similarly situated carriers who are able to comply. Generalized references to limited resources and implementation problems do not constitute

substantial, credible evidence justifying an exemption from the porting requirements.

In the Matter of Telephone Number Portability, Petition of The North-Eastern Pennsylvania Tel. Co. for Temporary Waiver of its Porting Obligations, CC Docket No. 95-116, DA 04-1312, at ¶¶9-10 (released May 13, 2004.)

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. The prayers for relief set forth in the Petitions in Cause Nos. 42529, 42536 and 42550 for a suspension of Petitioners' respective obligations to support wireline-to-wireless local number portability are hereby denied in a manner consistent with the Commission's discussion and findings as set forth above.

2. Petitioners who choose to avail themselves of the additional ninety (90) day extension shall file a report meeting the requirements of ¶3E above monthly until such extension is exhausted, ninety (90) days after the date of this Order.

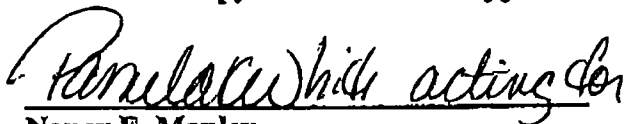
3. This Order shall be effective on after the date of its approval.

HADLEY, RIPLEY AND ZIEGNER CONCUR;

McCARTY AND LANDIS ABSENT:

APPROVED: MAY 18 2004

**I hereby certify that the above is a true
and correct copy of the Order as approved.**



**Nancy E. Manley
Secretary to the Commission**